

By Senator Brown-Waite

10-915-01

See HB 317

1                                   A bill to be entitled  
2           An act relating to health maintenance  
3           organizations; creating the "Managed Care  
4           Organization's Patient's Bill of Rights";  
5           providing legislative findings and intent;  
6           specifying that the purpose of the act is to  
7           ensure that quality health care and health  
8           benefits are provided to the people of this  
9           state; providing that managed care  
10          organizations owe a fiduciary duty to provide  
11          such care; creating s. 641.275, F.S.; providing  
12          legislative intent that the rights and  
13          responsibilities of subscribers who are covered  
14          under health maintenance organization contracts  
15          be recognized and summarized; requiring health  
16          maintenance organizations to operate in  
17          conformity with such rights; requiring  
18          organizations to provide subscribers with a  
19          copy of their rights and responsibilities;  
20          listing specified requirements for  
21          organizations that are currently required by  
22          other statutes; authorizing civil remedies to  
23          enforce the rights specified in s. 641.275,  
24          F.S.; providing for actual and punitive damages  
25          and attorney's fees and costs; providing for  
26          administrative fines; providing that there is  
27          not any liability on the part of certain  
28          employers or employee organizations; requiring  
29          a plaintiff to submit a written grievance as a  
30          condition precedent to bringing an action for  
31          damages; requiring that a managed care

1 organization dispose of a grievance within a  
2 specified period; requiring notice of an action  
3 to enforce the rights provided under the act;  
4 authorizing the court to abate an action and  
5 require completion of an internal grievance  
6 procedure; providing certain exceptions;  
7 providing for the statute of limitations to be  
8 tolled under specified circumstances;  
9 authorizing an action for nonmonetary relief  
10 without complying with conditions precedent for  
11 the purpose of preventing potential death or  
12 serious bodily harm; providing for  
13 severability; providing an effective date.  
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15 Be It Enacted by the Legislature of the State of Florida:  
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17 Section 1. Managed Care Organization's Patient's Bill  
18 of Rights.--This act may be cited as the "Managed Care  
19 Organization's Patient's Bill of Rights."

20 Section 2. Legislative findings and intent.--

21 (1) The Legislature finds that:

22 (a) The health, safety, and welfare of the people of  
23 this state are fundamental state interests that the  
24 Legislature is responsible for protecting through the laws of  
25 this state.

26 (b) The manner in which health care is provided to the  
27 people of this state has a direct impact upon the health,  
28 safety, and welfare of state residents.

29 (2) The Legislature intends that this act apply to all  
30 managed care organizations and that the term "managed care  
31 organization" include health insurance carriers; health

1 maintenance organizations; health service plans; other managed  
2 care entities that provide health care or health benefits; and  
3 entities regulated under chapters 624 through 631, Florida  
4 Statutes, and chapter 641, Florida Statutes, which provide  
5 health care benefits. Managed care organizations are engaged  
6 in the business of insurance in this state as that term is  
7 defined under the McCarran-Ferguson Act, 15 U.S.C. ss. 1011 et  
8 seq.

9       (3) The purpose of this act is to regulate the  
10 business of insurance and to ensure that appropriate quality  
11 health care and health benefits are provided through managed  
12 health care to the people of this state.

13       (4) Managed care organizations owe a fiduciary duty to  
14 the people of this state to ensure appropriate quality health  
15 care and health benefits to maintain and maximize the health,  
16 safety, and welfare of the people of this state.

17       (5) To ensure that adequate remedies exist to protect  
18 the health, safety, and welfare of the people of this state,  
19 this act creates substantive rights for quality health care  
20 and health benefits and provides remedies under state law for  
21 persons who are harmed by the failure of a managed care  
22 organization to meet appropriate standards for quality health  
23 care and health benefits guaranteed under this act.

24       (6) It is the intent of the Legislature that all  
25 managed care organizations be given notice of a violation of a  
26 patient's rights and be provided with an opportunity to comply  
27 with the law without the necessity of filing a civil action.  
28 The Legislature recognizes, however, that the rights and  
29 remedies identified in this act are necessary to properly  
30 regulate the business of insurance in this state and to

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1 protect the health, safety, and welfare of the people of this  
2 state.

3 Section 3. Section 641.275, Florida Statutes, is  
4 created to read:

5 641.275 Subscriber's rights and responsibilities under  
6 health maintenance contracts; required notice.--

7 (1) It is the intent of the Legislature that the  
8 rights and responsibilities of subscribers who are covered  
9 under health maintenance organization contracts be recognized  
10 and summarized in a statement of subscriber rights and  
11 responsibilities. An organization may not require a subscriber  
12 to waive his or her rights as a condition of coverage or  
13 treatment and must operate in conformity with such rights.

14 (2) Each organization must provide subscribers with a  
15 copy of their rights and responsibilities as set forth in this  
16 section, in such form as approved by the department.

17 (3) An organization shall:

18 (a) Ensure that health care services provided to  
19 subscribers are rendered under reasonable standards of quality  
20 of care consistent with the prevailing standards of medical  
21 practice in the community, as required by s. 641.51.

22 (b) Have a quality assurance program for health care  
23 services, as required by s. 641.51.

24 (c) Not modify the professional judgment of a  
25 physician unless the course of treatment is inconsistent with  
26 the prevailing standards of medical practice in the community,  
27 as required by s. 641.51.

28 (d) Not restrict a provider's ability to communicate  
29 information to the subscriber or patient regarding medical  
30 care options that are in the best interest of the subscriber  
31 or patient, as required by s. 641.315(5).

1           (e) Provide for standing referrals to specialists for  
2 subscribers with chronic and disabling conditions, as required  
3 by s. 641.51.

4           (f) Allow a female subscriber to select an  
5 obstetrician/gynecologist as her primary care physician, as  
6 required by s. 641.19(13)(e).

7           (g) Provide direct access, without prior  
8 authorization, for a female subscriber to visit a  
9 obstetrician/gynecologist, as required by s. 641.51(11).

10           (h) Provide direct access, without prior  
11 authorization, to a dermatologist, as required by s.  
12 641.31(33).

13           (i) Not limit coverage for the length of stay in a  
14 hospital for a mastectomy for any time period that is less  
15 than that determined to be medically necessary by the treating  
16 physician, as required by s. 641.31(31).

17           (j) Not limit coverage for the length of a maternity  
18 or newborn stay in a hospital or for followup care outside the  
19 hospital to any time period less than that determined to be  
20 medically necessary by the treating provider, as required by  
21 s. 641.31(18).

22           (k) Not exclude coverage for bone marrow transplant  
23 procedures determined by the Agency for Health Care  
24 Administration to not be experimental, as required by s.  
25 627.4236.

26           (l) Not exclude coverage for drugs on the ground that  
27 the drug is not approved by the United States Food and Drug  
28 Administration, as required by s. 627.4239.

29           (m) Give the subscriber the right to a second medical  
30 opinion as required by s. 641.51(5).

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1           (n) Allow subscribers to continue treatment from a  
2 provider after the provider's contract with the organization  
3 has been terminated, as required by s. 641.51(8).

4           (o) Establish a procedure for resolving subscriber  
5 grievances, including review of adverse determinations by the  
6 organization and expedited review of urgent subscriber  
7 grievances, as required by s. 641.511.

8           (p) Notify subscribers of the right to an independent  
9 external review of grievances not resolved by the  
10 organization, as required by s. 408.7056.

11           (q) Provide, without prior authorization, coverage for  
12 emergency services and care, as required by s. 641.513.

13           (r) Not require or solicit genetic information or use  
14 genetic test results for any insurance purposes, as required  
15 by s. 627.4301.

16           (s) Promptly pay or deny claims as required by s.  
17 641.3155.

18           (t) Provide information to subscribers regarding  
19 benefits, limitations, resolving grievances, emergency  
20 services and care, treatment by noncontract providers, list of  
21 contract providers, authorization and referral process, the  
22 process used to determine whether services are medically  
23 necessary, quality assurance program, prescription drug  
24 benefits and use of a drug formulary, confidentiality and  
25 disclosure of medical records, process of determining  
26 experimental or investigational medical treatments, and  
27 process used to examine qualifications of contract providers,  
28 as required by ss. 641.31, 641.495, and 641.54.

29           (4) The statement of rights in subsection (3) is a  
30 summary of selected requirements for organizations contained  
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1 in other sections of the Florida Statutes. This section does  
2 not alter the requirements of such other sections.

3 (5)(a) Patients and providers are responsible for  
4 providing, to the best of their knowledge, accurate and  
5 complete information about present complaints, past illnesses,  
6 hospitalizations, medications, and other matters that relate  
7 to the patient's health.

8 (b) A patient is responsible for reporting unexpected  
9 changes in his or her condition.

10 (c) A patient is responsible for reporting to the  
11 recommending physician whether he or she understands a  
12 contemplated medical course of action and what is expected of  
13 him or her.

14 (d) A patient is responsible for following the  
15 treatment plan recommended.

16 (e) A patient is responsible for keeping appointments  
17 and, when he or she is unable to do so for any reason, for  
18 notifying the health care provider or health care facility.

19 (f) A patient is responsible for following the  
20 procedures of the managed care organization for selecting a  
21 primary care physician and obtaining referrals.

22 (g) A patient is responsible for reading and ensuring  
23 the accuracy and completeness of information on an application  
24 to the best of his or her ability, and for not signing any  
25 blank, incomplete, or inaccurate form.

26 (h) A patient is responsible for reading and  
27 understanding the contract of his or her managed care  
28 organization.

29 (i) A patient is responsible for paying the monthly  
30 premium, even if the patient is involved in a financial  
31 dispute with the managed care organization.

1       (j) A patient is responsible for paying his or her  
2 coinsurance, deductibles, or copayments.

3       (k) A patient is responsible for arranging for prior  
4 approval before accepting care from a noncontracted provider,  
5 except in an emergency, as defined in s. 641.19, and for  
6 understanding the financial consequences of failing to obtain  
7 prior approval.

8       Section 4. Civil remedy to enforce rights.--

9       (1) Any person whose rights, as specified in section  
10 641.275, Florida Statutes, are violated has a cause of action  
11 against the managed care organization or provider. The action  
12 may be brought by the person, by the person's guardian, by an  
13 individual or organization acting on behalf of the person with  
14 the consent of the person or his or her guardian, or by the  
15 personal representative of the estate of a deceased person.  
16 The action may be brought in any court of competent  
17 jurisdiction to enforce such rights and recover actual and  
18 punitive damages for any violation of the rights of the  
19 person. The damages recoverable include all reasonably  
20 foreseeable harm caused by the violation of the rights  
21 specified in section 641.275, Florida Statutes. The damages  
22 are not limited by any other state law. Punitive damages may  
23 be awarded for conduct that is willful, wanton, gross,  
24 flagrant, reckless, or consciously indifferent to the rights  
25 of an individual protected by this act. Any plaintiff who  
26 prevails in such an action may recover reasonable attorney's  
27 fees, costs of the action, and damages, unless the court finds  
28 that the plaintiff has acted in bad faith or with malicious  
29 purpose or that there was a complete absence of a justiciable  
30 issue of law or fact. A prevailing defendant may claim  
31 reasonable attorney's fees under section 57.105, Florida



1 Statutes. The remedies provided in this section are remedial  
2 and are in addition to and cumulative with all other legal,  
3 equitable, administrative, contractual, or informal remedies  
4 available to the people of this state or to state agencies.

5 (2) Upon an adverse adjudication, the defendant is  
6 liable for actual and punitive damages as provided in  
7 subsection (1) or \$500 per violation of the managed care  
8 organization's patient's bill of rights, whichever is greater,  
9 together with court costs and reasonable attorney's fees  
10 incurred by the plaintiff.

11 (3) This section does not create any liability on the  
12 part of an employer of a patient or that employer's employees,  
13 unless the employer is the patient's managed care entity. This  
14 section does not create any liability on the part of an  
15 employee organization, a voluntary employee-beneficiary  
16 organization, or a similar organization, unless such  
17 organization is the patient's managed care entity and makes  
18 coverage determinations under a managed care plan.

19 (4)(a) As a condition precedent to bringing an action  
20 under this section, the patient must have submitted a written  
21 grievance to the managed care organization and received a  
22 final disposition of the grievance from the managed care  
23 organization. For purposes of this section, if a managed care  
24 organization fails to render a final disposition of the  
25 grievance within 30 days, the disposition shall be deemed to  
26 be adverse to the managed care organization. The 30-day time  
27 limit does not apply if the medical records necessary for a  
28 review of the grievance are not available or if a delay in the  
29 final disposition of the grievance is caused by the patient.

30 (b) If the patient does not submit a grievance to the  
31 managed care organization within 1 year after the action

1 giving rise to the grievance, as required by s. 641.511(1),  
2 Florida Statutes, the patient is not required to submit a  
3 grievance as a condition precedent to initiating and  
4 maintaining a cause of action to enforce his or her rights.  
5 However, the patient must provide 30 days' written notice to  
6 the managed care organization of the patient's intent to  
7 pursue a civil action for a violation of the managed care  
8 organization's patient's bill of rights. The notice must  
9 include:  
10       1. The alleged violation of the patient's rights.  
11       2. The facts and circumstances giving rise to the  
12 violation.  
13       3. The name of any individual involved in the  
14 violation.  
15       4. A statement that the notice is given in order to  
16 give the managed care organization the opportunity to comply  
17 with the law.  
18       (5) If the patient does not comply with subsection  
19 (4), the court may not dismiss the action, but may order that  
20 the patient complete the internal grievance procedure of the  
21 managed care organization, as provided in paragraph (4)(a), or  
22 give the 30 days' notice, as provided in paragraph (4)(b). The  
23 court may abate the action for such purposes for not more than  
24 60 days. Such orders of the court are the only remedies  
25 available to a party that complains of a patient's failure to  
26 comply with subsection (4).  
27       (6) Subsection (4) does not apply if harm to the  
28 patient has already occurred or is imminent.  
29       (7) The statute of limitations with respect to an  
30 action that may be brought under this section is tolled upon  
31 submission of a grievance in accordance with section 641.511,

1 Florida Statutes, or submission of 30 days' notice, whichever  
2 is applicable, and the time such grievance or notice is  
3 pending is not included within the period limiting the time  
4 for bringing such action.

5 (8) There is no other condition precedent to bringing  
6 an action under this section.

7 (9)(a) It is the intent of the Legislature that this  
8 section provide to the people of this state the ability to  
9 enforce their rights through equitable, injunctive, or other  
10 relief, in addition to relief for monetary damages. A claim  
11 for nonmonetary relief may be brought in conjunction with a  
12 claim for monetary damages by complying with subsection (4).

13 (b) An action for nonmonetary relief may also be  
14 brought under this section without complying with the  
15 conditions precedent that are identified in subsection (4) if  
16 immediate relief is necessary to prevent potential death or  
17 serious bodily harm. The court shall provide for an expedited  
18 hearing to resolve the matter in a manner designed to avoid  
19 potential death or serious bodily harm.

20 Section 5. If any provision of this act or its  
21 application to any person or circumstance is held invalid, the  
22 invalidity does not affect other provisions or applications of  
23 the act which can be given effect without the invalid  
24 provision or application, and to this end the provisions of  
25 this act are severable.

26 Section 6. This act shall take effect July 1, 2001,  
27 and shall apply to contracts issued or renewed on or after  
28 that date.

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LEGISLATIVE SUMMARY

Creates the "Managed Care Organization's Patient's Bill of Rights." Provides legislative intent that the rights and responsibilities of subscribers who are covered under health maintenance organization contracts be recognized and summarized. Requires health maintenance organizations to operate in conformity with such rights and to provide subscribers with a copy of their rights and responsibilities. Lists specified requirements for organizations that are currently required by other statutes. Authorizes civil remedies to enforce the rights specified in the act. Provides for actual and punitive damages, attorney's fees and costs, and administrative fines. Provides that there is not any liability on the part of certain employers or employee organizations. Requires a plaintiff to submit a written grievance as a condition precedent to bringing an action for damages. Requires that a managed care organization dispose of a grievance within a specified period. Requires notice of an action to enforce the rights provided under the act. Authorizes the court to abate an action and require completion of an internal grievance procedure, and provides certain exceptions. Provides for the statute of limitations to be tolled under specified circumstances. Authorizes an action for nonmonetary relief without complying with conditions precedent for the purpose of preventing potential death or serious bodily harm.